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December 16, 2022

**Via ECF**

Hon. Gary R. Brown, USDJ  
United States District Court  
Eastern District of New York  
100 Federal Plaza  
Central Islip, NY 11722-9014  
Courtroom 940

*Merchants Bank of Indiana v. Sprout Mortgage, LLC*  
2:22-cv-04480-GRB-SIL

Dear Judge Brown:

This firm represents defendant Sprout Mortgage, LLC (“Sprout”) in the above-captioned matter.

On November 17, 2022, plaintiff Merchant’s Bank of Indiana (“MBIN”) filed a premotion letter seeking a premotion conference and briefing schedule for a motion for summary judgment (Docket No. 16). On November 18, 2022, this Court granted the motion and scheduled a premotion conference on February 17, 2023, and directed response by defendant, as clarified by amendment November 22, 2022, to the premotion letter by December 5, 2022. Upon consent application by defendant on December 2, 2022, this Court granted an extension of defendant’s time to respond to plaintiff’s premotion letter to December 16, 2022.

This letter is submitted in response to plaintiff’s November 17, 2022 letter seeking a premotion conference for a motion for summary judgment against defendant, in accordance this Court’s Rules and the November 18, 2022 order, as amended.

Enclosed herewith is defendant’s Rule 56.1 Counter-Statement in response to plaintiff’s Rule 56.1 Statement. As identified further therein and in the accompanying declaration and exhibit, defendant disputes and asserts that issues of fact exist regarding the computation of the alleged amounts owed. Defendant disputes the calculation thereof under the terms of the agreement governing the relationship of the parties and in light of admissions by plaintiff. Defendant further disputes the amounts owed in light of the counterclaim defendant asserts against plaintiff for violation of the same agreement, as supported by the accompanying declaration and exhibit.

Because a pre-motion conference has been scheduled for February 17, 2023, Defendant humbly proposes that this Court accept this letter as a request to treat said conference as a pre-motion conference for defendant’s cross-motion for leave to file a late answer to assert said counterclaims. In light of this Court’s Rules concerning non-dispositive motions, defendant will alternatively submit its motion for leave to file a late answer to Magistrate Judge Locke, upon such terms as this Court may direct.

Upon consent stipulation of the parties, this Court previously extended defendant's time to answer to September 23, 2022. Subsequently, the undersigned and counsel for plaintiff conferred in good faith concerning substantive settlement negotiations and further extensions of defendant's time to answer. Plaintiff ultimately denied the request for consent to further extensions of time to answer on October 13, 2022, and ultimately terminated the settlement negotiations on November 3, 2022, two weeks before the filing of plaintiff's pre-motion letter.

Generally, an application for an extension of time to file a responsive pleading to a complaint will be granted in the absence of bad faith or prejudice to the adverse party. *See, e.g., Structural Concrete Prods, LLC v. Clarendon Am. Ins. Co.*, 244 F.R.D. 317, 327 (E.D. Va. 2007). Plaintiff has not filed a motion for entry of default and no Initial Conference has been held. As further established by defendant's letter of December 2, 2022, defendant required additional time to submit this response in part due to circumstances beyond the control of counsel, namely the difficulties in accessing records and information from the defendant entity, which is no longer operating as a going concern. Finally, as set forth in the accompanying Declaration of David Akre and exhibit thereto, Sprout has demonstrated that it has a meritorious counterclaim to assert against MBIN.

Thank you for your attention to these matters.

Respectfully submitted,

/s/

Forchelli Deegan Terrana LLP

By: Nathan R. Jones

cc: counsel for plaintiff (*via ECF*)